

No. 29697—*In re: William F. Sorsby, III, et al. v. WFS Financial, Inc. and Ronald Burton Squires and Marsha Renea Squires, et al. v. Mercedes-Benz Credit Corp.*

FILED

January 14, 2002

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

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McGraw, C.J., dissenting:

While the majority in this case presents a compelling argument in favor of the repeal or modification of W. Va. Code § 17A-4A-14, the fact remains that the Legislature has not seen fit to take such action, and I simply fail to discern an intent in either the text or history of the counterposed W. Va. Code § 46-9-301(2) to abrogate this more specific statute.

As the majority recognizes then quickly ignores, “[r]epeal of a statute by implication is not favored in law.” Syl. pt. 1, *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960). In most circumstances, where two statutes, one general and the other more specific, conflict, the specific statute is deemed to be an exception to the more general legislation. See Syl. pt. 1, *UMWA by Trumka v. Kingdon*, 174 W. Va. 330, 325 S.E.2d 120 (1984) (“The general rule of statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled.”). In this case § 17A-4A-14 is more specific than § 46-9-301(2), since it pertains to certificates of title in the limited context of automobiles. One respected treatise states that

[w]here one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will

prevail, *regardless of whether it was passed prior to the general statute*, unless it appears that the legislature intended to make the general act controlling.

2B Norman J. Singer, *Sutherland Statutory Construction* § 51.05, at 244 (6th ed. 2000) (footnotes omitted) (emphasis added).

As to whether the legislature has signaled an intent to impliedly repeal a specific statute through the adoption of a more general law, this Court stated in syllabus point 2 of *Trumka v. Clerk of the Circuit Court of Mingo County*, 175 W. Va. 371, 332 S.E.2d 826 (1985):

“‘A general statute, which does not use express terms or employ words which manifest a plain intention so to do, will not repeal a former statute dealing with a particular subject, and the two statutes will operate together unless the conflict between them is so real and irreconcilable as to indicate a clear legislative purpose to repeal the former statute.’ Point 6, syllabus, *Harbert v. The County Court of Harrison County*, 129 W. Va. 54 [39 S.E.2d 177 (1946)].” Syllabus Point 1, *Brown v. Civil Service Comm’n*, 155 W. Va. 657, 186 S.E.2d 840 (1972).

See also syl. pt. 7, *Rice v. Underwood*, 205 W. Va. 274, 517 S.E.2d 751 (1998).

I simply fail to discern a conflict “so real and irreconcilable as to indicate a clear legislative purpose to repeal [§ 17A-4A-14].” By departing from the more forgiving provisions of the UCC, the Legislature may just as conceivably have intended that the rigid 30-day period imposed by § 17A-4A-14 should promote compliance with other regulatory and taxing requirements linked to automobile titling and registration. *See, e.g.*, 1957 W. Va. Acts, Reg. Sess. ch. 110 (requiring proof of payment of personal property taxes as prerequisite for vehicle registration) (codified as amended at W. Va. Code 17A-3-3a

(2001)); 1951 W. Va. Acts, Reg. Sess. ch. 129, art. 3, § 4 (imposing two-percent privilege tax on obtaining certificate of title) (codified as amended at W. Va. Code § 17A-3-4(b) (2000)).

Thus, in my view the majority in this case erred by finding that § 17A-4A-14 was impliedly repealed by the adoption of the UCC. I therefore respectfully dissent.